IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:10.10.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition No. 29461 of 2006

& M.P.Nos.1 and 2 of 2006

A.Renganathan (Selection Grade),
Assistant Agricultural Officer,
O/o.Agricultural Development Office,
Ekkadu, Thiruvallur District.
... Petitioner

Vs.

1. The Joint Director of Agriculture,
Thiruvallur, Thiruvallur District.

2. The Assistant Director of Agriculture,
Thiruvallur at Kakkalur,
Thiruvallur District.

3. The Agricultural Development Officer,
Ekkadu, Thiruvallur District.
... Respondents

PRAYER : This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for records relating to the proceedings of the Assistant Director of Agriculture in letter No.E/1969/02, dated 25.08.2006 the 2nd respondent herein directing the petitioner to pay a sum of Rs.23,117/- for the unsold stocks paddy seeds sold in the regulated market quash the same and forbear the respondents herein to recover the said sum in any manner.

Petitioner : M/s. G.Sridevi
Respondents : Mr.A.Edwin Prabhakar
Government Advocate

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O R D E R

This writ petition is filed challenging the order of the second respondent dated 25.08.2006 directing the petitioner to pay a sum of Rs.23,117/- for the unsold stocks of paddy seeds to be sold in the regulated market and to forbear the respondents from making recovery from the petitioner's salary.

2. The case of the petitioner is that he is working as Assistant Agricultural Officer, in the Agricultural Department, having been initially appointed as a Field Demonstration Officer in the Office of the

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Small Development Project Office, Mamallan Nagar, Kancheepuram, on 01.07.1981 and he was subsequently upgraded as Assistant Agricultural Officer on 19.07.1995 and was awarded as Selection Grade on 01.07.2006 and serving with unblemished record of service. The second respondent has issued a memo on 03.03.2006 calling for explanation with regard to audit objection in respect of the unsold stocks of paddy seeds sold in the regulated market in subsidized prices and stating that consequently, there was a loss to the Government. The petitioner also submitted his explanation on 05.05.2006 deyning the responsibility fixed on the petitioner in respect of the unsold stocks as it is the duty of the Agricultural Development Officer who would be actually entrusted with the responsibility of the unsold stocks as per the Government order. Since in the mean time, the petitioner has completed 25 years of service, he has applied for voluntary retirement on 20.05.2005 to be retired from 31.08.2006. While so, on 25.08.2006 the petitioner was served with the impugned order stating as if by the conduct of the petitioner a loss has been caused to the Government and that an amount of Rs.23,117/- should be paid before 31.08.2006. It is this order, which is challenged in this writ petition.

3. The petitioner would rely upon an order of the Tamil Nadu Administrative Tribunal wherein, the Tribunal has quashed the recovery proceedings in respect of Assistant Administrative Officer directing to refund of the amount, since the reasons attributed for unsold stocks on the Assistant Agricultural Officer is arbitrary. The petitioner also would rely upon the subsequent judgment of this Court in W.P.No.19207 of 2006 dated 11.07.2006, holding that the Assistant Agricultural Officer cannot be held responsible for the unsold stocks in respect of seeds and fertilizers to be sold in the subsidized price.

4. The second respondent has filed a counter affidavit. The second respondent would rely upon G.O.Ms.No.289 Agriculture (T&V) Department, wherein, the job responsibility of field functionaries have been explained and therefore, according to the second respondent, it cannot be said that the petitioner is not responsible for the sale of seeds in a subsidized price.

5. According to the second respondent, the Controlling Officer namely the Agricultural Development Officer shall allocate or earmark targets among the Agricultural Officers and therefore, the responsibility of the petitioner is clearly fixed as per the said G.O.

6. I have heard the learned counsel for the petitioner as also the learned Government Advocate for the respondents.

7. The admitted fact is that while the petitioner was working as Assistant Agricultural Officer he was served with the impugned memo fixing a responsibility in respect of the unsold seeds. The question to be considered is as to whether, he has been entrusted with the sale of such seeds in a subsidized manner or not. A reference to the G.O.Ms.No.289, dated 27.04.1989 shows that the responsibility in respect of the over stock lies with the Agricultural Development Officer. The relevant clause in the said G.O. which speaks about the job of Agricultural Development Officers states as follows:

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"The Agricultural Development Officer will be responsible for over-stocking as well as for the unsold stocks"

8. It is the case of the petitioner that in his explanation submitted to the impugned memo that as Assistant Agricultural Officer, he is not entrusted with the stocks. As correctly pointed out by the learned counsel for the petitioner, exactly the same issue came to be decided in respect of another Assistant Agricultural Officer in O.A.No.5815 of 2001 dated 01.10.2001 wherein the Tribunal has held that even assuming that there is a failure to achieve the target of sale of seeds in a subsidized price, there can be no cause of action for recovery of amount from the salary holding that even the case of the Government is that the Government has invested money in purchasing fertilizers and other inputs which have been kept idle in the godown instead of being sold to the farmers who were entitled to purchase the same in a subsidized rate and ultimately held that in respect of Assistant Agricultural Officers, there was no entrustment and therefore, the recovery from the salary is unwarranted. That was the view taken in a subsequent case also by the Tamil Nadu Administrative Tribunal. Ultimately, when a matter was taken to this Court in W.P.No.14888 to 14892 of 2006 in S.N.Ahmed Vs. The Commissioner of Agriculture, Chennai 5 and others, in the judgment dated 21.06.2006 and also in another judgment reported in 2006(1) CTC 632, this Court has taken a definite view that it is not the responsibility of the petitioner in respect of the unsold seeds and fertilizers, the non purchase of seeds and fertilizers by the farmers may be due to various reasons like poor rainfall, non-availability of funds etc., and in such circumstances the action of the respondents in seeking to recover the amount on the basis that by non-sale the losses caused to the Government was held to be unreasonable. In fact, this court in the said judgment has followed the earlier order of this Court reported in 1988 WLR 38, wherein also this Court has held in respect of non-collection of professional taxes by the Bill Collectors working in the Corporation, the conduct of the Corporation in making recovery from the salary of the Bill Collectors was held to be unreasonable. This was also followed in a subsequent unreported judgment.

9. In view of the decision by the categorical pronouncement of this Court as stated above, I have no hesitation to come to the conclusion that the petitioner as Assistant Agricultural Officer cannot be mulcted with the responsibility and recovery order cannot be passed. In view of the same, the impugned order passed by the second respondent against the petitioner is quashed with a direction to the respondents to consider the plea of the petitioner for the voluntary retirement without holding that the petitioner is not liable for payment of the same.

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The writ petition stands allowed with the above terms. No Costs. Consequently, connected W.P.M.Ps are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

To
1. The Joint Director of Agriculture,
Thiruvallur, Thiruvallur District.

2. The Assistant Director of Agriculture,
Thiruvallur at Kakkalur,
Thiruvallur District.

3. The Agricultural Development Officer,
Ekkadu, Thiruvallur District.

+ 1 CC To Ms. G.Sridevi, Advocate SR NO. 47118

+ 1 CC to the Government Pleader SR NO 47323

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& M.P.Nos.1 and 2 of 2006

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